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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,669	01/26/2004	Thomas J. Luby	5671.051	8798

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EXAMINER

ROST, ANDREW J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,669

Applicant(s)

LUBY, THOMAS J.

Examiner

Andrew J. Rost

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) 16,17 and 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-15,18-21 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6-14-2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, the embodiment of a rotary valve shown in Figures 1-5;

Species II, the embodiment of a biasing valve shown in Figures 6-9.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 18 and 19 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Marc Brockhaus on 08-01-2005 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-15 and 18-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-17 and 22-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

3. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-25 of this application because the specification of the application does not claim the priority from the provisional application.

Specification

4. The disclosure includes the following informalities: paragraph 0024, line 7, "endwall 50" should be "end wall 50a".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, "the walls of the inner and outer barrels are defined as sidewalls" is confusing and unclear. It is not clear how the walls of the barrels can be defined as sidewalls. A possibility is the walls of the inner and outer barrels have sidewalls.

Regarding claim 8, "the walls of the inner and outer barrels are defined as end walls" is confusing and unclear. It is not clear how the walls of the barrels can be defined as end walls. A possibility is the walls of the inner and outer barrels have end walls.

Regarding claim 9, "the wall of the inner barrel is defined as a sidewall and the wall of the outer barrel is defined as an end wall" is confusing and unclear. It is not clear how the walls of the barrels can be defined as sidewalls or end walls. A possibility is the wall of the inner barrel having a sidewall and the wall of the outer barrel having an end wall.

Regarding claim 10, "the wall of the inner barrel is defined as an end wall and the wall of the outer barrel is defined as a sidewall" is confusing and unclear. It is not clear how the walls of the barrels can be defined as sidewalls or end walls. A possibility is the wall of the inner barrel having an end wall and the wall of the outer barrel having a sidewall.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4-10, 12, 14 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed (3,561,487).

In regards to claims 1 and 19, Reed discloses a vessel assembly having a vessel with a sidewall (9 in Figure 1) that defines a cavity, a valve assembly supported by the sidewall and extending into the cavity (Figure 1) comprising of a barrel (2 in Figure 2) with a wall defining a chamber and having at least one opening (5a, 4a and 12 in Figure 2). The valve member is movable between an open and closed position.

Regarding claims 4, 5, 20, and 21, Reed discloses a valve member with an inner barrel (1 in Figure 2) having a wall defining an opening (5b and 4b in Figure 2) with an outer barrel (2 in Figure 2, previously barrel from claims 1 and 19) also containing openings. The inner barrel is rotated relative to the outer barrel (column 1, line 51), which allows the valve to be opened or closed.

In regards to claim 6, Reed discloses a vessel assembly with threads (ridge and groove combination 18 and 19 in Figure 2) on the wall of the barrel.

Regarding claim 7, Reed discloses a vessel assembly of two barrels that contain sidewalls.

Regarding claim 8, Reed discloses a vessel assembly of two barrels that contain end walls. The end wall of the outer barrel is taken to be the surface that interacts with the flange (3a in Figure 2).

Regarding claim 9, Reed discloses a vessel assembly of two barrels that contain an inner barrel with a sidewall and an outer barrel with an end wall.

Regarding claim 10, Reed discloses a vessel assembly of two barrels that contain an inner barrel with an end wall and an outer barrel with a sidewall.

In regards to claim 12 and 14, Reed discloses a structure that would be able to operate within a fluid-containing surface or tubing (Col. 1, line 7). The structure of Reed would be able to handle fluid flows. The examiner takes the tubing to be a pipe.

8. Claims 1, 6, 12, 13, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ingram (4,320,343).

In regards to claims 1 and 19, Ingram discloses a vessel assembly having a vessel with a sidewall (112 in Figure 1) that defines a cavity, a valve assembly supported by the sidewall and extending into the cavity (Figure 1) comprising of a barrel (100 in Figure 1) with a wall defining a chamber and having at least one opening. The valve member is movable between an open and closed position.

In regards to claim 6, Ingram discloses a vessel assembly with threads (110 in Figure 1) on the wall of the barrel.

In regards to claim 12-13, Ingram discloses a valve for exposing a probe to a fluid to measure the properties (Col. 1, line 8). The valve is able to be used for pressurized electrolyte solution (Col. 1, line 10). The probe is able to be used in a fluid

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container (Col. 2, line 32). The examiner takes the transponder of claim 13 to be a fluid container.

In regards to claim 18, Ingram discloses a sensor assembly that comprises a container with a sidewall (112 in Figure 1) and a fluid (113 in Figure 1), a valve assembly that is supported by the sidewall with a portion extending into the cavity of the container and a barrel (100 in Figure 1) having a wall and at least one opening, a valve member movable between an open and closed position, and a sensor (300 in Figure 1) that is removable from the barrel (Col. 2, line 14).

In regards to claim 20, Ingram discloses an outer barrel (100 in Figure 1) and an inner barrel (200 in Figure 3) with at least one opening (210 in Figure 3) that allows fluid passage into an interior chamber (214 in Figure 4).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Harstad (5,402,821).

Regarding claims 2 and 3, Reed discloses the vessel assembly as claimed. Reed does not have an elongated opening and a closure member inserted in the elongated opening. However, Harstad discloses an elongated opening (52 in Figure 6)

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containing a closure member (48 in Figure 6) for the purpose of selective positioning of the closure device and permitting the flow of the fluid to be adjusted when advantageous or necessary. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the elongated opening with closure member of Harstad to the vessel assembly of Reed in order to regulate the opening of the valve and being able to stop the rotation of the valve when the valve is in the full open or full close position.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Burnworth (5,782,455).

Reed discloses a vessel assembly having an inner barrel and an outer barrel. Reed does not have an o-ring between the inner barrel and outer barrel. However, Burnworth teaches the use of o-rings between moving sleeves for the purpose of preventing the fluid from passing out of the valve region (Col. 4, line 4). Therefore, it would have been obvious to one of ordinary skill in the art to position an o-ring between the inner barrel and outer barrel of Reed as taught by Burnworth in order to provide a more secure seal.

Allowable Subject Matter

12. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zink (5,211,202) discloses a pressure sealed well in a tanker. Zink (5,386,845) discloses pressurized well seals for a fluid compartment. The Immersion Temperature Probe disclosed the development to remove thermal wells allowing a probe to be placed directly in the fluid. The Dry well "Pockets" gives temperature ranges for current temperature probes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Rost whose telephone number is 571-272-2711. The examiner can normally be reached on 8 - 4:30 M-F.

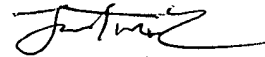
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Andrew J Rost
Examiner
Art Unit 3751



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
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8/8/05